FILED
AUG 14 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

(4)

NO. 98-49

In The

SUPREME COURT of the UNITED STATES

October Term, 1997

Immanuel Grinn,

Petitioner,

vs.

Village of North Palm Beach, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITIONER'S REPLY BRIEF

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425

12 pp

TABLE OF CONTENTS

	page
Table of Contents	i
Rebuttal	1
Conclusion	8

TABLE OF CITATIONS

Cases cited:

Adkinson v. Municipal Recall Committee, 488 So.2d 621 (Fla.App 1 Dist. 1986)	4
Basic Energy v. Hamilton County, 652 So.2d 1238 (Fla.App. 1 Dist. 1995)	4
Buckner v. Lower Florida Keys Hospital Dist., 403 So.2d 1025 (Fla. App. 3 Dist. 1981)	5
City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla.1983)	3
City of Ocala v. Nye, 608 So.2d 15 (Fla.1992)	3-4
City of Winter Park v. Montesi, 448 So.2d 1242 (Fla.App. 5 Dist. 1984)	3
Guthrie v. Florida Power & Light Co., 460 So.2d 1032 (Fla.App. 3 Dist 1985)	6
Loeb v. Geronemus, 66 So.2d 241 (Fla. 1953)	5
Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607 (Fla.App. 4 Dist. 1975)	5

page

State v. Brown, 298 So.2d 487 (Fla. 4th DCA 1974) 3

State v. Bussey, 463 So.2d 1141 (Fla.1985) 4

State v. City of Sunrise, 354 So.2d 1206 (Fla.1978) 3

Thomas v. State, 614 So.2d 468 (Fla.1993) 4

United States Statutes Cited:

28 U.S.C. § 636 1

28 U.S.C. § 636(b)(1) 2

United States Rules Cited:

Supreme Court Rule 10 7

Fed.R.Civ.P. Rule 8(a)(2) 1

Fed.R.Civ.P. Rule 8 (f) 8

Magistrate Rules of the Local Rules of the Southern District of Florida 1

Rule 7.1B, General Rules of the United States District Court, Southern District of Florida..... 2

Florida Constitution Cited:

Article VIII, §2(b) 3

Florida State Statutes Cited:

§ 11.242 4

§ 104.185 2,3

page

§166.021 (4) 3

§166.042..... 3

Other Authorities Cited:

The Bible, Deuteronomy, 16:20. 8

Op.Atty.Gen., 064-3, January 15, 1964..... 3

The Federalist, No.51, Jacob E. Cooke, Ed., Wesleyan University Press (1961) p.352 8

I, Immanuel Grinn, *pro se*, file this Reply Brief addressed to new points raised in the Respondent's Brief in Opposition.

Throughout this Reply Brief, where braces {} appear, they are indices of my intrusions in cited quotations. Where bold type appears, **my** emphasis is to be inferred.

On page 5 of the Village of North Palm Beach's Respondent's Brief in Opposition (RBO) the Village states: "At no time did the Petitioner object to the jurisdiction of the Magistrate Judge." In my opinion, there was nothing to object to. The Order of Reference filed March 3, 1997 states:

> PURSUANT to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, the above-captioned Cause is hereby referred pretrial to United States Judge Ann E. Vitunac to take all necessary and proper action as required by law and/or to submit a Report and Recommendation to this Court.

As the Village states in RBO page 7, pursuant to 28 U.S.C. § 636 the District Judge appointed "a magistrate to **hear and** determine pretrial matters." **But I never had a hearing**. The magistrate made determinations and issued her Report and Recommendation filed April 23, 1997. On May 2, 1997, I filed a 14 page, ten Exhibit Response to the Report and Recommendation.

The Village states (RBO pages 7-8) that I had "ample opportunity to present **all** relevant information and exhibits prior to the rulings of the Court and recommendations of the Magistrate." According to FRCP 8(a)(2): "A pleading which sets forth a claim for relief ... shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." I attempted to do just that. As I wrote repeatedly in my submittals, many more exhibits would be produced at hearings and trial.

The Village refers (RBO page 8) to *Rule 7.1B, General Rules of the United States District Court, Southern District of Florida* which "provides a procedure for oral argument of which the Petitioner did not avail himself." Rule 7.1B refers to hearings on **motions.** "No hearing will be held on motions unless set by the Court." I interpret the Complaint as separate and distinct from a motion. 28 U.S.C. § 636(b)(1) stipulates that when a judge designates a magistrate on a motion "to dismiss for failure to state a claim upon which relief can be granted", the magistrate is "to conduct hearings, including evidentiary hearings. ..."

The Village asserts on RBO, page 11 that "the Petitioner could not state a claim no matter how he tried to amend his complaint." In all my submissions to the courts, I laid out undisputed facts in the case, included evidentiary exhibits, and made allegations of constitutional violations supported by those facts and exhibits. Essential elements of my argument were misconstructed in that the courts below deemed that insufficient evidence was submitted by me to back up my claim. As described in my *Petition for Writ of Certiorari*, I included additional exhibits in the written communications with the courts below, which were not acknowledged in the courts' opinions.

With few exceptions (see *infra*), from the last paragraph on page 11 to most of the paragraph on page 25, the RBO is almost a word for word (including scrivener errors) regurgitation of pages 7 through 17 of the Village's *Brief of Appellees* (BOA) filed with the United States Court of Appeals on September 17, 1997. In the main, I can do no better than I did in my *Appellant Reply Brief* (ARB) filed December 17, 1997, where I based my argument in large part using other citations from the very same case law or showing that the context of the case law cited by the Village was not analogous to the instant Complaint.

In my ARB, I did not adequately address all the assertions by the Village in the BOA, *e.g.*, RBO pages 11-12, wherein the Village quotes *Florida Statute § 104.185.* I had, however, done so earlier on page 4 in my reply, filed April 8, 1997, to the Village's Motion to Dismiss.

The Village's assertion is:

This statute is part of *Chapter 104, Florida Statutes* and is referred as the *Corrupt Practices Act*, which *Act* is applicable to all elections in the State of Florida, including municipal elections. *State v. Brown*, 298 So.2d 487 (Fla. 4th DCA 1974); *Op.Atty.Gen.*, 064-3, January 15, 1964.

My reply was:

13. In answer to DMDp4Π5, Plaintiff denies that Florida Statute 104.185 is applicable to all elections in the State of Florida.

a) The opinion of the Attorney General of January 15, 1964 cited in *State v. Brown*, 298 So.2d 487 (Fla. 4th DCA 1974) was prior to the revision of the State Constitution in 1968 with the new language of Article VIII, §2(b), which reflected the new "home rule" philosophy of the State Legislature. The enabling legislation F.S.§166.042 and F.S. §166.021 (4) (with its "***express***" language) were filed June 8, 1973 and took effect October 1, 1973. The decision of August 9, 1974 in *State v. Brown* was premised on an indictment of February 1973. *See* Point G, Points and Authorities soon to be submitted by Plaintiff.

b) The intent of the Florida Legislature when it promulgated and passed the language in the Statute was to regulate ***State*** petitions (*See* Exhibit D in Plaintiff's original Complaint).

c) The application of Statute 104.185 to municipal elections is contrary to Article VIII, §2(b), Florida Constitution and enabling legislation of Florida Chapter 166 ("Municipal Home Rule Powers Act"). *See State v. City of Sunrise, 354 So.2d 1206, 1209 (Fla.1978)* {R1-26-9}; *City of Boca Raton v. Gidman, 440 So.2d 1277, 1280 (Fla.1983)* {R1-26-9,10}; *City of Winter Park v. Montesi, 448 So.2d 1242, 1243 (Fla.App. 5 Dist. 1984)* {R1-26-10,11}; *City of Ocala v. Nye, 608 So.2d 15, 17*

(Fla.1992) {R1-26-11}; *Thomas v. State, 614 So.2d 468, 472 (Fla.1993)* {R1-26-11,12}; *Basic Energy v. Hamilton County, 652 So.2d 1238, 1238 (Fla.App. 1 Dist. 1995)* {R1-26-11}. {R1-25-4}

To counter the possible implication of the Village's clause that *Chapter 104* is referred to as the *Corrupt Practices Act*, I stated in my ARB, page 6: "Physical placement and location of the statute is not determinative of legislative intent. *See State v. Bussey*, 463 So.2d 1141, 1143 (Fla.1985)." I quoted the applicable portion on page 2 of the addendum:

> The arrangement and classification of laws for purposes of codification in the Florida Statutes is an administrative function of the Joint Legislative Management Committee of the Florida Legislature § 11.242, Fla.Stat. (1983). The classification of a law or part of a law in a particular title or chapter of Florida statutes is not determinative on the issue of legislative intent, though it may be persuasive in certain circumstances.

In RBO, page 16, the Village invites comparison to *Adkinson v. The Municipal Recall Committee of June 7, 1985*, 488 So.2d 621 (Fla. 1st DCA 1986). In *Adkinson* the petitions were received and filed. In the instant case, the petitions were never filed nor received by deadline. Furthermore, as I pointed out on page 7 in my reply filed April 8, 1997 to the Defendants' Motion to Dismiss:

> 23. *Adkinson v. Municipal Recall Committee*, 488 So.2d 621 (Fla.App 1 Dist. 1986), is about compliance with regulations of procedure for recall petitions by petitioners. The Plaintiff Grinn in this case complied with all the regulations of the Village Charter ordinance. The Village refused the Plaintiff a "second bite of the apple" that is plainly allowed by the language of the ordinance and precedent written out by the Village Attorney. It is the Village that failed to comply with the procedures the Village instituted to regulate a First Amendment right.

The Village in RBO pages 23 and 24 cites *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, *Loeb v. Geronemus*, and *Buckner v. Lower Florida Keys Hospital Dist.* to support its contention that "There is no cause of action for conspiracy." *Orlando* was a business and libel suit; *Loeb* was a case referring to a church or social group, not a government; and *Buckner*, although centering on interference in a profession, in my citation, supports my position.

> This is an appeal from the entry of a final judgment dismissing with prejudice appellant's amended complaint which sought damages from appellees in count one: for malicious interference with business, count two: for libel and count three: for conspiracy to interfere with business relations and to libel. *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So.2d 607, 608 (Fla.App. 4 Dist. 1975).

> In respect to such a situation {"a matter of dissension in a church or social group as to differences of opinion"} the general rule is that statements and communications made in connection with the various activities of such an organization or group enjoy a qualified privilege {...} *"so long as they act without malice." Loeb v. Geronemus*, 66 So.2d 241,244 (Fla. 1953).

> {A}n action for conspiracy to interfere with one's profession (or conspiracy to commit any tort for that matter) requires that there has been a combination of two or more persons (or entities) seeking to accomplish an unlawful act or to accomplish a lawful act by unlawful means. *Buckner v. Lower Florida Keys Hospital Dist.*, 403 So.2d 1025, 1029 (Fla. App. 3 Dist. 1981).

On pages 24-25 of the RBO the Village cites *Guthry {sic} v. Florida Power and Light.* I have alleged that in the criminal trial that individual defendants intervened with undue pressure on the prosecutor to forestall amicable settlement of the criminal case. I submitted my transcript as Exhibit 9 with my Response to the Magistrate Judge's Report and Recommendation.

The criminal proceedings against me, as well as ancillary events, were caused by the Village employees named in the instant case.

> {T}he commencement of the criminal proceedings against Walter {Guthrie instead of William Guthrie} was not caused by the employees of FPL, but solely by mistake of the State Attorney { }. *Guthrie v. Florida Power & Light Co.*, 460 So.2d 1032, 1033 (Fla.App. 3 Dist 1985)

The changes from the BOA to the RBO that are more than *de minimis* are:

On page 17 eliminated is: a footnote in the last paragraph attached to the word "official" which cites case law.

On page 20 added is: "no matter how many times the Petitioner sought to amend his complaint."

On page 22 added is: "No amount of amendments would give the Petitioner a cause of action against those individual Respondents." Eliminated is: "GRINN has set forth no clearly established constitutional right which these DEFENDANTS intentionally violated and".

On page 24 added is: "Of the six elements required to be plead {*sic*},". Eliminated is: the enumerated listing of those six elements. Added is: "the petitioner cannot, regardless of how many times he amends, set forth the element of lack of probable cause." Eliminated is: "In the complaint, Grinn omits one important element, to wit: probable cause. In fact, Grinn cannot allege that there was a lack of probable cause since,".

On page 25 after the "*Guthry* {*sic*} cite, eliminated is:

> And finally, the allegation in the complaint that the charges were dismissed is not sufficient to establish the element of no probable cause since dismissal of a case involving a person accused of violating law is not sufficient to establish the absence of probable cause for instituting criminal proceedings

On page 25 added is: "and procedurally" and

> The Eleventh circuit reviewed the record *de novo* and found that the Petitioner could not prove any facts that would entitled {*sic*} him to relief. There is no basis for allowing Petitioner to amend his complaint and no basis to find that Petitioner's procedural due process rights were violated because he had no oral argument on the motion to dismiss or that an "improper standard" was applied.

On page 10 of the RBO, the Village cites selectively *Supreme Court Rule 10* to support its request that the petition be denied. In trepidation that my silence might be mistakenly interpreted as not knowing better, I note that the *Rule* prefaces the standards of calling for "an exercise of this Court's supervisory power" by stating that the "character of the reasons" are "neither controlling nor fully measuring the Court's discretion...." Furthermore, I feel that I met the Village-mentioned explicit standard that the decision of the United States court of appeals "has so far departed from the accepted and usual course of judicial proceedings" as well as the Village's unnoted explicit standard that the court of appeals has "sanctioned such a departure by a lower court."

CONCLUSION

Justice would be served by granting the Petition for Writ of Certiorari which seeks review of decisions that a first trial and/or hearing be denied me. "All pleadings shall be construed as to do substantial justice." *FRCP Rule 8(f)*. "Justice is the end of government. It is the end of civil society." *The Federalist, No.51*. "Justice, Justice above all, you shall pursue, in order that you may thrive, and inherit the domain which the Lord your God is giving you." *Deuteronomy, 16:20*.

Respectfully submitted

Immanuel Grinn, *pro se*
536 Greenway Drive
North Palm Beach, FL 33408-3720

(561) 626-5425